

## **B\_\_\_, Rights in Data - General**

(a) *Definitions.* "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications or such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made a part of the subcontract, including minor modifications of such computer software.

"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, meant the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.*

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in -

- (i) Data first produced in the performance of the subcontract;
- (ii) Form, fit, and function data delivered under the subcontract;
- (iii) Data delivered under this subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under the subcontract; and

(iv) All other data delivered under the subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Subcontractor shall have the right to -

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of the subcontract unless provided otherwise in paragraph (d) of this clause;

- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of the subcontract to the extent provided in subparagraph (c)(1) of this clause.

(c) *Copyright.*

(1) *Data first produced in the performance of the subcontract.* Unless provided otherwise in paragraph (d) of this clause, the Subcontractor may establish, without prior approval of the University, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of the subcontract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the University is required to establish claim to copyright subsisting in all other data first produced in the performance of the subcontract. When claim to copyright is made, the Subcontractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including subcontract number) to the data when such data are delivered to the University as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, or perform publicly or display publicly by or on behalf of the Government.

(2) *Data not first produced in the performance of the subcontract.* The Subcontractor shall not, without prior written permission of the University, incorporate in data delivered under the subcontract any data not first produced in the performance of the subcontract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; *provided*, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in the subcontract or as otherwise may be provided in a collateral agreement incorporated in or made part of the subcontract.

(3) *Removal of copyright notices.* The University agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.*

(1) The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of the subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in the subcontract.

(2) The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of the subcontract which contains restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the University.

(3) The Subcontractor agrees not to establish claim to copyright in computer software first produced in the performance of the subcontract without prior written permission of the University. When such permission is granted, the University shall specify appropriate terms to assure dissemination of the software. The Subcontractor shall promptly deliver to the University or to the Patent Counsel designated by the University a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and other terms pertaining to the computer software to which claim to copyright is made.

(e) *Unauthorized marking of data.*

(1) Notwithstanding any other provisions of the subcontract concerning inspection or acceptance, if any data delivered under the subcontract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause, or if such data bears any other restrictive or limiting markings not authorized by the subcontract, the University may at any time either return the data to the Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The University shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the University for good cause shown), the University shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the University shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the University determines that the markings are authorized, the Subcontractor shall be so notified in writing. If the University determines, with the concurrence of the DOE Contracting Officer, that the markings are not authorized, the University shall furnish the Subcontractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the University's decision. The University shall continue to abide by the markings under this subdivision (e)(1)(ii) until final resolution of the matter either by the University's determination becoming final (in which instance the University shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedure set forth in subparagraph (e)(1) of this clause may be modified in accordance with DOE regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the University's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Subcontractor is not precluded by this paragraph (e) from bringing a claim under the Disputes clause of the subcontract that may arise as the result of the University removing or ignoring authorized markings on data delivered under the subcontract.

(f) *Omitted or incorrect markings.*

(1) Data delivered to the University without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the University assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the University or the Government, the Subcontractor may request, within 6 months (or a longer time approved by the University for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and the University may agree to do so if the Subcontractor-

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the use of the proposed notice is authorized; and
- (iv) Acknowledges that the University has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice resulting from the omission of the notice.

(2) The University may also (i) permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.*

(1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under the subcontract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them to the University under the subcontract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the University are to be treated as limited rights data and not restricted computer software.

(h) *Subcontracting.* The Subcontractor has the responsibility to obtain from its lower-tier subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations to the University under the subcontract. If a lower-tier subcontractor refuses to accept terms affording the University such rights, the Subcontractor shall promptly bring such refusal to the attention of the University and not proceed with lower-tier subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the University or Government under any patent or be construed as affecting the scope of any license of other right otherwise granted to the University or the Government.

(j) The Subcontractor agrees, except as may be otherwise specified in the subcontract for specific data items listed as not subject to this paragraph, that the University may, up to three years after acceptance of all items to be delivered under the subcontract, inspect at the Subcontractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Subcontractor whose data are to be inspected demonstrates to the University that there would be a possible conflict of

interest if the inspection were made by a particular representative, the University shall designate an alternate inspector.

**B\_\_, Additional Paragraph (g)(2) to Clause B\_\_, Rights in Data-General**

(2) Notwithstanding subparagraph (g)(1) of this clause, the subcontract may identify and specify the delivery of limited rights data, or the University may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Subcontractor may affix the following "Limited Rights Notice" to the data and the University will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

**LIMITED RIGHTS NOTICE**

(a) These data are submitted with limited rights under Subcontract No. \_\_\_\_\_ (and lower-tier subcontract, if appropriate). These data may be reproduced and used by the University and the Government with the express limitation that they will not, without written permission of the Subcontractor, be used for purposes of manufacture nor disclosed outside the University or the Government; except that the University or the Government may disclose these data outside the University or the Government for the following purposes, if any; provided that the University and the Government makes such disclosure subject to prohibition against further use and disclosure:\*

(b) This Notice shall be marked on any reproduction of these data in whole or in part.

(End of Notice)

**\*The purposes shall be identified in the subcontract schedule when this clause is used.**

**B\_\_, Additional Paragraph (g)(3) to Clause B\_\_, Rights in Data - General**

(3)(i) Notwithstanding subparagraph (g)(1) of this clause, the subcontract may identify and specify the delivery of restricted computer software, or the University may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Subcontractor may affix the following "Restricted Rights Notice" to the computer software, the University will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

**RESTRICTED RIGHTS NOTICE**

(a) This computer software is submitted with restricted rights under Subcontract No. \_\_\_\_\_ (and lower-tier subcontract \_\_\_\_\_ if appropriate). It may not be used, reproduced, or disclosed by the University or the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the subcontract.

(b) This computer software may be -

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, *provided* that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or Subcontractors in accordance with subparagraphs (b)(1) through (4) of this clause, provided the University or the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copy-righted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated or incorporated in, the subcontract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

#### RESTRICTED RIGHTS NOTICE SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in Subcontract No. \_\_\_\_\_ (and lower-tier subcontract \_\_\_\_\_, if appropriate) with \_\_\_\_\_ (name of Subcontractor and lower-tier subcontractor).

(End of Notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the University and the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Subcontractor includes the following statement with such copyright notice: "Unpublished - rights reserved under the Copyright Laws of the United States."